

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

WILLIE BALDWIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:05cv0754-VPM
	)	[WO]
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**ORDER ON MOTION**

Pending before the court is the plaintiff's motion for attorney fees (Doc. # 20) pursuant to the Equal Access to Justice Act ["EAJA"], 28 U.S.C. § 2412 (2000). The court finds that the motion should be denied.

On 3 August 2006, this court entered a final judgment in favor of the plaintiff (Doc. # 19). In accordance with rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure, the defendant may appeal the court's judgment anytime up to and including 3 October 2006. Therefore, the plaintiff may not file a motion for attorney fees under EAJA until 4 October 2006, when the final judgment is no longer appealable, assuming, of course, the Commissioner chooses not to appeal. 28 U.S.C. § 2412(d)(1)(B) (requiring attorney fee motions to be filed "within 30 days of final judgment"); § 2412(d)(2)(g) (defining "final judgment" as "a judgment that is final *and not appealable*"); *see also, e.g., Jackson v. Chater*, 99 F.3d 1086, 1095 n.4 (11th Cir. 1996).

Therefore, it is hereby

ORDERED that the plaintiff's motion is DENIED as untimely. Nothing in this order should be construed as precluding the plaintiff from re-filing her motion at the appropriate time.

DONE this 8<sup>th</sup> day of September, 2006.

/s/ Vanzetta Penn McPherson  
VANZETTA PENN MCPHERSON  
UNITED STATES MAGISTRATE JUDGE